

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 25

APPLICATION PROCEDURES RELATING TO  
HAWAII FINANCIAL INSTITUTIONS

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### SUBCHAPTER 1

#### GENERAL PROVISIONS

§16-25-1 Objectives. The objective of this chapter is to implement the requirements of chapter 412, Hawaii Revised Statutes, as they relate to applications, requests for opinions, and interpretations of law or rule, and consumer complaints. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-100, 412:2-107)

§16-25-2 Definitions. As used in this chapter:

"Application" means any written request for approval or action by the commissioner of financial institutions, including but not limited to: a petition, letter request, notice filing, or other submittal filed in the form prescribed by the commissioner and containing information required to determine whether a license, charter, certificate of authority, or any approval shall be granted.

"Appropriate federal regulatory agency" means, with respect to a financial institution or financial institution holding company, any one or more regulatory agencies of the federal government referred to in the following sentence which either (1) insures the deposits of the financial institution or financial institution holding company, or (2) has the power and duty to conduct periodic general examinations of the affairs of the financial institution or financial institution holding company by virtue of the legal characterization of the financial institution or financial institution holding company under federal law, and not by virtue of the fact of affiliation of the financial institution or financial institution holding company with any other person or an alleged violation of a specific law. Subject to the preceding sentence, an appropriate federal regulatory agency may be the Federal Deposit Insurance Corporation, the Comptroller of the

Currency, the Federal Reserve Board, the Office of Thrift Supervision, the National Credit

Union Administration or any regulatory agency of the federal government which shall succeed to the insurance or supervisory duties of one of the foregoing.

"Commissioner" means the commissioner of financial institutions of this State.

"Division" means the division of financial institutions of the department of commerce and consumer affairs of this State.

"Financial institution" means a Hawaii financial institution, and unless the context indicates otherwise, a federal financial institution or foreign financial institution.

"Financial institution holding company" means a holding company which controls a Hawaii financial institution or which controls another financial institution holding company. The following persons shall not be deemed to come within the definition of a financial institution holding company:

- (1) A registered dealer who acts as an underwriter or member of a selling group in a public offering of the voting securities of a financial institution or of a financial institution holding company;
- (2) A person who acts as proxy for the sole purpose of voting at a designated meeting of the security holders of a financial institution or of a financial institution holding company;
- (3) A person who acquires control of a financial institution or of a financial institution holding company by devise or descent; or
- (4) A pledgee of a voting security of a financial institution or of a financial institution holding company who does not have the right, as pledgee, to vote such voting security.

"Hawaii financial institution" or "institution" means:

- (1) A corporation or credit union which holds a charter or license under chapter 412, HRS, or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, HRS, or to engage in the business of a trust company; or
- (2) A resulting bank as defined in article 12 of chapter 412, HRS,

and includes a corporation, mutual savings and loan association or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, resulting bank as defined in article 12 of chapter 412, HRS, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank. [Eff 8/13/87; am and comp 1/27/01]

(Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:1-109, 412:2-100, 412:2-107)

## SUBCHAPTER 2

### APPLICATION PROCEDURES

§16-25-7 General procedures. Any person desiring to obtain the approval of the commissioner shall:

- (1) File an application in the form prescribed by this chapter;
- (2) File the appropriate application fee, if any; and
- (3) Provide public notice of the filing of the application, as prescribed by this chapter. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107) (Imp: HRS §§412:2-105, 412:3-102, 412:3-111, 412:3-112, 412:3-113, 412:3-201, 412:3-204, 412:3-208, 412:3-210, 412:3-211, 412:3-212, 412:3-301, 412:3-302, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-204, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:5A-210, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-104, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-600, 412:10-803, 412:12-102, 412:12-103, 412:12-104, 412:12-106, 412:13-202, 412:13-203, 412:13-205, 412:13-206, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-227, 412:13-301)

§16-25-8 Application forms; fees. (a) Each application referred to in this chapter shall be made by the completion and submittal to the commissioner, in duplicate, of:

- (1) The application form prescribed by the commissioner, copies of which may be obtained by request from the division; or



- (2) The application in letter form, if no application form has been prescribed by the commissioner. The application in letter form

shall state in detail the nature and scope of the requested consent or approval and all information reasonably required for the commissioner's review and consideration of the application.

(b) If in respect of the subject matter of an application the applicant is required to submit an application to the appropriate federal regulatory agency on a prescribed form, the application filed with the commissioner may constitute a copy of the application form filed or to be filed with the respective federal agency. The commissioner may require in respect of this type of application the submittal of information not specifically prescribed by the federal application form, but required by state law.

(c) An application fee shall be paid by check made payable to the "Department of Commerce and Consumer Affairs, State of Hawaii", concurrently with the filing of the application. The fee shall be nonrefundable. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107) (Imp: HRS §§412:1-109, 412:2-105, 412:3-102, 412:3-111, 412:3-112, 412:3-113, 412:3-201, 412:3-208, 412:3-210, 412:3-211, 412:3-212, 412:3-301, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-204, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:5A-210, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-104, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-600, 412:10-803, 412:12-102, 412:12-103, 412:12-104, 412:12-106, 412:13-202, 412:13-203, 412:13-205, 412:13-206, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-227, 412:13-301)

§16-25-9 Sufficiency of application. An application filed with the commissioner shall not be deemed complete, unless it includes all of the information required on the prescribed form and any additional relevant information as the commissioner may require by written request to the applicant. The failure of an applicant to respond within ten business days of the date of the written request for additional information may be treated as grounds for denial of an application. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:3-102, 412:3-111, 412:3-112, 412:3-113, 412:3-201, 412:3-202, 412:3-203, 412:3-207, 412:3-208, 412:3-210, 412:3-211, 412:3-212, 412:3-213, 412:3-301, 412:3-305,

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§16-25-10 Applications by Hawaii financial institutions. (a) Unless otherwise provided, this chapter applies to the applications listed below to organize banks, savings banks, savings and loan associations, trust companies, and depository financial services loan companies. Application fees, if any, are designated.

- (1) Application for preliminary approval to organize a Hawaii financial institution (\$9,000);
- (2) Application for approval of articles of incorporation and bylaws;
- (3) Application for approval of capital stock solicitation; and
- (4) Final application for charter or license.

(b) Unless otherwise provided, this chapter applies to the applications listed below from banks, savings banks, savings and loan associations, trust companies, and depository and nondepository financial services loan companies. Application fees, if any, are designated.

- (1) Application to change a Hawaii financial institution's name;
- (2) Application for approval to issue preferred stock by a Hawaii stock financial institution other than a nondepository financial services loan company (bank: \$150; trust company: \$150);
- (3) Application by a Hawaii stock financial institution other than a nondepository financial services loan company to decrease its authorized capital stock or the par value of capital stock having par value, or to decrease its outstanding capital stock by the acquisition of its own shares (bank: \$150; trust company: \$150);
- (4) Application to relocate a principal office, or to open or relocate a branch or agency (open bank in-state branch: \$500; relocate bank principal office or in-state branch: \$150; open bank out-of-state

branch: \$100; open savings and loan association branch: \$500;  
relocate savings and loan association principal office or branch:

- \$150; open financial services loan company branch: \$500; relocate financial services loan company principal office or branch \$50);
- (5) Application for a certificate of good standing;
  - (6) Application for conversion from federal to comparable Hawaii financial institution (bank: \$500; savings and loan association: \$500);
  - (7) Application for conversion to another type of Hawaii financial institution (nondepository financial services loan company conversion to depository financial services loan company: \$500);
  - (8) Application for a merger or consolidation involving a Hawaii financial institution (bank: \$500; trust company: \$500; savings and loan association: \$500);
  - (9) Application for the merger of a Hawaii state bank with and into an out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction (\$9,000);
  - (10) Application for the merger or consolidation of financial institution holding companies;
  - (11) Application to acquire control of a Hawaii financial institution or financial institution holding company (savings and loan association: \$500; financial services loan company: \$500);
  - (12) Application to sell or acquire assets and transfer or assume liabilities (bank: \$250; savings and loan association: \$250);
  - (13) Application to expedite an application for conversion, merger, consolidation, acquisition, or assumption; and
  - (14) Application for approval to cease business. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107, 412:3-102, 412:3-201, 412:3-210, 412:3-603) (Imp: HRS §§412:2-105, 412:2-503, 412:2-507, 412:2-508, 412:3-102, 412:3-201, 412:3-208, 412:3-210, 412:3-212, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:12-102, 412:12-103, 412:12-104, 412:12-105, 412:12-107, 412:12-108)

§16-25-11 Bank applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application to acquire powers granted under federal law;

- (2) Application to acquire, establish, or hold the voting securities of an operating subsidiary;
- (3) Application to accept drafts or bills of exchange in excess of one hundred fifty per cent of capital and surplus;
- (4) Application to engage in trust business (\$5,000);
- (5) Application to transact insurance business;
- (6) Application to engage in securities activities;
- (7) Application for authority to exercise additional powers;
- (8) Application by an intra-Pacific bank or intra-Pacific bank holding company to engage in business in Hawaii; and
- (9) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107) (Imp: HRS §§412:2-105, 412:5-201, 412:5-203, 412:5-204, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-407, 412:12-108)

§16-25-12 International banking corporation applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application to establish an international banking corporation;
- (2) Application by an international banking corporation to purchase stock or other certificates of ownership in another corporation; and
- (3) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107, 412:5A-201) (Imp: HRS §§412:2-105, 412:5A-201, 412:5A-205, 412:5A-210)

§16-25-13 Foreign bank applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application to establish and maintain a branch or agency (\$9,000);
- (2) Application to establish additional intrastate Hawaii state branches or Hawaii state agencies (\$1,500);
- (3) Application to secure an amended license to establish and maintain a branch or agency (\$1,500);
- (4) Application to establish and maintain a representative office (\$1,500);

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- (5) Application by a foreign bank to conduct other activities at a representative office;
- (6) Application to relocate a branch, agency, or representative office (\$250);
- (7) Application to close a branch, agency, or representative office (\$250); and
- (8) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:-107, 412:13-206, 412:13-216, 412:13-223, 412:13-224) (Imp: HRS §§412:2-105, 412:13-202, 412:13-203, 412:13-205, 412:13-206, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-223, 412:13-224, 412:13-227, 412:13-301)

§16-25-14 Trust company applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application to deposit reserve in banks and other trust companies;
- (2) Application for approval of agreements between trust companies and banks; and
- (3) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107) (Imp: HRS §§412:2-105, 412:8-202, 412:8-204, 412:8-301)

§16-25-15 Savings bank and savings and loan association applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application to acquire powers granted under federal law;
- (2) Application to form and own a service corporation (savings and loan association: \$150);
- (3) Application to acquire, establish, or hold the voting securities of an operating subsidiary;
- (4) Application by a mutual savings and loan association to convert to a stock form; and
- (5) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107, 412:6-201, 412:6-204, 412:7-201,



412:7-204) (Imp: HRS §§412:2-105, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-403, 412:7-408)

§16-25-16 Financial services loan company applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application for a license as a nondepository financial services loan company (\$5,000);
- (2) Application to sell or refer accidental death and dismemberment insurance, auto club memberships, and home and automobile security plans;
- (3) Application to issue standby letters of credit;
- (4) Application to sell or refer fixed rate annuities;
- (5) Application to deposit cash reserves in United States branches of non-United States banks;
- (6) Application to form and own a service corporation;
- (7) Application for additional service corporation powers; and
- (8) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107, 412:3-301) (Imp: HRS §§412:2-105, 412:3-301 412:9-201, 412:9-400, 412:9-401, 412:9-03, 412:9-409)

§16-25-17 Credit union applications. Unless otherwise provided, this chapter applies to the applications listed below. Application fees, if any, are designated.

- (1) Application for charter (\$20);
- (2) Application to change field of membership;
- (3) Application to acquire powers granted under federal law;
- (4) Application to relocate a principal office, or to open or relocate a branch or agency (open branch: \$20);
- (5) Application for conversion from federal to Hawaii credit union (\$20);
- (6) Application for the merger of a Hawaii credit union with a Hawaii or federal credit union (\$20);
- (7) Application to change a Hawaii credit union's name;
- (8) Application for approval to cease business; and

- (9) Application for any other approval by the commissioner. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-105, 412:2-107, 412:10-103, 412:10-201) (Imp: HRS §§412:2-105, 412:3-102, 412:3-503, 412:3-505, 412:3-607, 412:3-609, 412:3-617, 412:10-103, 412:10-104, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-803)

§16-25-18 Emergency applications. Notwithstanding any provision contained in this chapter, an application may be approved by the commissioner without notice, comment, or hearing in any case which the commissioner determines to be an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution. No such emergency applications may be granted unless the commissioner determines that the relevant statutory criteria have been met. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-501, 412:2-502, 412:2-503, 412:2-504, 412:2-507, 412:2-508, 412:2-510, 412:2-511)

### SUBCHAPTER 3

#### NOTICE AND COMMENT PROCEDURES

§16-25-23 Scope. (a) Except as otherwise provided by law, this subchapter applies to the following types of applications:

- (1) Application for proposed new financial institution;
- (2) Application to establish a branch or agency;
- (3) Application to relocate the principal office, branch, or agency;
- (4) Application to sell or acquire assets, to transfer or assume liabilities and deposits, or to merge or consolidate with another company; and
- (5) Any other application which the commissioner deems appropriate. If an application falls within this category, the applicant will be notified at the time the application is accepted for filing that the procedures set forth in this subchapter shall be followed.

(b) This section and sections 16-25-24 through 16-25-26 shall not apply to credit unions. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-508, 412:3-102, 412:3-111, 412:3-112,

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412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-204, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:5A-210, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-600, 412:10-803, 412:12-102, 412:12-103, 412:12-104, 412:12-106, 412:13-202, 412:13-203, 412:13-205, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-227, 412:13-301)

§16-25-24 Notice by publication of application; opportunity to comment and provide information. (a) Except as otherwise provided by statute, upon the filing of an application, the applicant shall publish notice of the proposed transaction in a newspaper of general circulation in the State. The published notice shall include the name of the applicant, the subject matter of the application, and the location or locations at which the applicant proposes to engage in business. A copy of the notice shall be filed with the division.

(b) In order to apprise the public of an opportunity to comment on an application, the notice shall include a statement describing the opportunity to comment on or protest the granting of, or request an informational and comment proceeding on the application. Except as otherwise provided by statute, the notice shall include the following statement:

"Any person wishing to comment on the application may file comments in writing with the Commissioner of Financial Institutions (1010 Richards Street, Honolulu, Hawaii 96813) within fifteen days of the date of this notice. The comments may include a statement protesting or supporting the application.

You may at the same time request that an informational and comment proceeding be held on the application. If this proceeding is requested, you should include a brief statement of your interest in the application, the matters you wish to discuss, and the reasons why a written presentation would not suffice in lieu of the proceeding.

The nonconfidential portion of the application and related documents will be available for inspection within one working day following a request for the application and documents. The application and documents may be inspected at the Division of Financial Institutions during regular business hours."

[Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107)  
(Imp: HRS §§412:3-204,

412:3-302, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613)

§16-25-25 Comments on application; request for informational and comment proceeding. (a) Any person may file with the commissioner written comments on an application within fifteen days of the publication of notice. The comment period may be extended by the commissioner for good cause.

(b) Any person who files a written comment may at the same time request that an informational and comment proceeding be held on the application. A request for the proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters the person wishes to discuss at the proceeding, and the reasons why a written presentation would not suffice in lieu of the proceeding. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:3-204, 412:3-302, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613)

§16-25-26 Informational and comment proceeding. (a) The purpose of the informational and comment proceeding shall be to receive information and comments from interested persons on an application.

(b) If the commissioner decides to hold an informational and comment proceeding, the commissioner shall notify the applicant and each person who requested a proceeding of the date, time, and location of the proceeding, not less than ten days prior to the proceeding. The commissioner may also decide not to hold an informational and comment proceeding, in which case the commissioner shall so advise the applicant and each person who requested the proceeding.

(c) The informational and comment proceeding shall involve a meeting with division representatives at which the participants shall be asked to present their views orally. Separate meetings with each of the participants may be conducted where deemed advisable.

(d) There is no proof to be made during an informational and comment proceeding, and no burden of proof is, therefore, placed on the applicant or any person. Witness statements are unsworn, voluntary, and not subject to any restriction, except that they pertain to the application. The proceeding shall not be recorded or transcribed.

(e) The informational and comment proceeding shall be open to the public, except when the commissioner determines that the circumstances warrant confidentiality. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100,

412:2-107) (Imp: HRS §§412:3-205, 412:3-303, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613)

§16-25-27 Public review of application; exceptions. (a) Subject to other provisions of this chapter, all applications, correspondence, and supporting documents filed with the commissioner shall be available for public review as provided by law following receipt of a request to review them.

(b) Information claimed by an applicant to be confidential shall be submitted on separate pages which can be detached from the rest of the application. The confidential information shall be submitted separately and identified on the top of each page by the words "Submitted as Confidential". Information submitted as being confidential shall be accompanied by a separate statement requesting confidential treatment and providing reasons and authority for maintaining confidentiality. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§92F-11, 92F-18, 412:2-100, 412:2-107) (Imp: HRS §§92F-11, 92F-13, 92F-18, 412:2-104, 412:3-201, 412:3-301, 412:3-603)

§16-25-28 Confidentiality of application. No information contained in any application or supporting documents shall be made available to the public if it is determined by the commissioner to be confidential. Information that may be considered confidential includes, but is not limited to the following:

- (1) Commercial or financial information, the disclosure of which would, or would be likely to, result in substantial competitive harm to the applicant;
- (2) Information, the disclosure of which could seriously affect the financial condition of any institution;
- (3) Personal information, the release of which would, or would be likely to, constitute a clearly unwarranted invasion of privacy; or
- (4) Other information, the disclosure of which is prohibited by section 412:2-104, HRS. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§92F-11, 92F-18, 412:2-100, 412:2-107) (Imp: HRS §§92F-11, 92F-13, 92F-18, 412:2-104, 412:3-201, 412:3-301, 412:3-603)

## SUBCHAPTER 4

### STANDARDS OF REVIEW; DECISIONS

§16-25-33 Rights of applicants; obligations of commissioner. An applicant has a right to file an application and to obtain full consideration of the application by the commissioner in light of all relevant facts and without prejudice. If all of the relevant criteria are resolved favorably, the applicant is entitled to receive the requested authorization. In the event an application is disapproved, an applicant has a right to be informed by the commissioner of the reasons for disapproval. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-504, 412:2-508, 412:3-102, 412:3-201, 412:3-206, 412:3-207, 412:3-208, 412:3-210, 412:3-212, 412:3-213, 412:3-301, 412:3-304, 412:3-305, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-205, 412:5-205.5, 412:5-205.6, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:5A-210, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-104, 412:10-105, 412:10-107, 412:10-108, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-800, 412:10-801, 412:10-802, 412:10-803, 412:10-804, 412:12-102, 412:12-103, 412:12-104, 412:12-107, 412:13-202, 412:13-203, 412:13-204, 412:13-205, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-227, 412:13-301)

§16-25-34 Burden of proof. The applicant shall have the burden of providing information to satisfy all relevant criteria in support of an application. The burden of proof in any contested case hearing, including the burden of producing the evidence and the burden of persuasion, shall be upon the applicant. Proof of a matter shall be by a preponderance of the evidence. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-504, 412:2-508, 412:3-102, 412:3-201, 412:3-202, 412:3-206, 412:3-208, 412:3-210, 412:3-212, 412:3-301, 412:3-304, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-205, 412:5-205.5, 412:5-205.6, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:5A-210, 412:6-201, 412:6-203, 412:6-204,



412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-104, 412:10-105, 412:10-107, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-800, 412:10-801, 412:10-802, 412:10-803, 412:10-804, 412:12-102, 412:12-103, 412:12-104, 412:12-107, 412:13-202, 412:13-203, 412:13-205, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-227, 412:13-301)

§16-25-35 Criteria for proposed institutions. The criteria applied to applications relating to proposed institutions may include, but are not limited to:

- (1) General character of management. The quality of an institution's management is vital and perhaps the single most important element in determining the applicant's acceptability as a proposed institution. If the management of the proposed institution does not have an operating record as a functioning unit to assist in forming a judgment, the management review may require an evaluation of the individual officers and directors. Shareholders who subscribe to ten per cent or more of the aggregate par value of stock to be issued may also exert an influence in the management of the proposed institution, and an evaluation of those shareholders may also be appropriate in reviewing the general character of management.
  - (A) Among the information to be considered in evaluating each officer and director, and each shareholder subscribing to ten per cent or more of the stock to be issued are:
    - (i) Their current and past business experiences, financial capacities, and financial interests;
    - (ii) Their proposed duties and responsibilities as related to their business experience and capabilities;
    - (iii) Their familiarity with the community or trade area; and
    - (iv) Any financing arrangements to purchase stock of the proposed institution.
  - (B) The following information may also be evaluated in reviewing the proposed management:
    - (i) Arrangements such as buy-sell, voting trust, or proxy agreements between various individuals or other entities;

- (ii) Plans for management changes prior to opening or after the commencement of operations; and
  - (iii) Plans for financing the businesses or personal interests of certain officers and directors.
- (2) Adequacy of capital structure. A proposed institution must have:
  - (A) A minimum capital structure of the amount dictated by statute;
  - (B) Sufficient balances in shareholder equity accounts against which initial start-up costs and foreseeable contingencies can be charged; and
  - (C) An adequate capital structure as related to its proposed type and volume of business, projected growth, and projected level of earnings. For institutions whose deposits will be federally insured, capital shall be at a level no less than that which is required by the applicable federal law or regulation for newly organized institutions.
- (3) Financial history and condition. The pro forma statement of the proposed institution as of the beginning of business, a schedule and appraisal of all assets with which the proposed institution intends to begin business, and projected financial statements for the first three years of operation shall be considered in analyzing this factor. Some consideration may also be given to the history of other companies presently and formerly operating in the area of the applicant, if pertinent.
- (4) Future earnings prospects. Detailed estimates of operating income and expenses for the first three years of operation and the assumptions used in determining the projections shall be analyzed. Information shall include the applicant's plans for payment of cash dividends, bonuses, director's fees, retainers fees, and the accounting method to be used. Regarding the accounting systems, the division requires use of the accrual method from the outset of operations.
- (5) Convenience and needs of the community. In determining convenience and needs of the community, a clear definition of the proposed institution's trade area, a description of the principal economic activities in the trade area, and population figures and trends are essential factors to consider. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-504, 412:2-508, 412:3-201, 412:3-202, 412:3-206, 412:3-212, 412:3-301, 412:3-304, 412:3-607,

412:3-608, 412:3-609, 412:3-613, 412:5-205, 412:5-402, 412:10-103, 412:10-107, 412:10-121, 412:10-800, 412:10-803, 412:12-104, 412:13-202, 412:13-203, 412:13-216, 412:13-217, 412:13-301)

§16-25-36 Criteria for existing institutions. The criteria for proposed institutions and for existing institutions are generally the same. The following criteria may apply to applications submitted by existing institutions:

- (1) Financial history and condition. The financial history of an operating institution is usually reflected in its present condition. Where the financial history of an operating institution has not been successful, reasonable assurances shall be provided that the cause of any past difficulties of a serious nature have in large measure either been overcome or cease to exist. With respect to an operating institution's financial condition, the general quality of net assets shall be satisfactory and on a par with that of other comparable institutions. In appraising the value and quality of an applicant operating institution's assets, the same appraisal and classification procedures and criteria shall be followed as in regular division examinations. Other information to be considered include: violations of laws and rules, contingent liabilities, existing litigation against the institution, dividend and remuneration policies, policies regarding prompt recognition and charge-off of losses, and other matters which could affect the institution's condition.
- (2) Adequacy of the capital structure. An existing institution should have sufficient capital to support the volume, type, and character of its business, provide for losses, and meet the reasonable needs of the community for financial services.
- (3) Future earnings prospects. The earnings capability of an existing institution is reflected in its earnings record. An operating institution's earnings records shall indicate ability to pay all operating expenses with a safe margin for the absorption of losses and for the payment of reasonable dividends.
- (4) General character of management. In the case of an existing institution, management may be evaluated both from the standpoint of the institution's condition and the vantage point of management's past performance as reflected in the books and records of the institution, and previous examination reports and correspondence.

- (5) Convenience and needs of the community. This criterion is closely related to those outlined with respect to the "future earnings prospect" criterion. An institution which is successfully and profitably operated, and which has a recognized place and established customer relationships in the community is presumed to promote the convenience and advantage of the community. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-504, 412:3-102, 412:3-402, 412:3-503, 412:3-505, 412:3-607, 412:3-608, 412:3-609, 412:5-201, 412:5-203, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-402, 412:5A-201, 412:5A-205, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-109, 412:10-201, 412:10-502, 412:10-800, 412:12-102, 412:12-103, 412:12-104, 412:12-107, 412:13-202, 412:13-203, 412:13-205, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-301)

§16-25-37 Additional disqualification criteria. (a) Managerial resource test. The presumption that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing may be rebutted by evidence to the contrary, including without limitation a finding that such director, officer, or controlling person has:

- (1) Consented to or suffered a judgment in any administrative action based upon conduct involving an act of fraud or dishonesty;
- (2) Consented to or suffered any indictment, formal investigation, examination, or civil or administrative proceedings that resulted in any agreement, undertaking, consent, or order issued by any federal or state court, any department, agency, or commission of the United States government, any state or municipality, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involves an act of fraud or dishonesty;
- (3) Been involved in the denial, withdrawal after receipt of formal or informal notice of an intent to deny, by the applicant or affiliates of the applicant, of:

- (A) Any application relating to the organization of a financial institution;
- (B) An application to acquire any financial institution, subsidiary or holding company thereof; or
- (C) A notice relating to a change in control of any financial institution, subsidiary or holding company thereof; or
- (4) Been placed in receivership or conservatorship during the preceding ten years, was a management official or director of a financial institution which entered into receivership or conservatorship, was placed in a management consignment program, or was liquidated during his or her tenure or within two years thereafter.
- (b) Financial resource and future prospects test. The following factors shall give rise to a rebuttable presumption that the applicant has not satisfied the financial resources and future prospects criteria:
  - (1) Liability for amounts of debt which, in the opinion of the commissioner, create excessive risks of default and pressure on the institution;
  - (2) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with the standards of the financial services industry.
- (c) Subsections (a) and (b) shall not be deemed an exclusive list of the grounds upon which the commissioner may find that the relevant criteria have not been met. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-504, 412:2-508, 412:3-201, 412:3-202, 412:3-206, 412:3-212, 412:3-301, 412:3-304, 412:3-402, 412:3-503, 412:3-505, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:5-201, 412:5-203, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-402, 412:5A-201, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-107, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-800, 412:10-803, 412:12-102, 412:12-103, 412:12-104, 412:12-107, 412:13-202, 412:13-203, 412:13-205, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-301)

§16-25-38 Branch or relocation applications. The criteria for institutions apply to applications for branches or relocation of offices. Emphasis shall be placed on the financial history and condition of the applicant institution, rather

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than upon the financial history and condition of the subject branch or office. An application involving a move of an existing office from the one location to another within the same primary market area is of less significance than a relocation to a different primary market area or the establishment of a new branch. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:3-503, 412:3-505, 412:5-401, 412:5-402, 412:12-107, 412:13-202, 412:13-203, 412:13-222, 412:13-301)

§16-25-39 Repealed. [R 1/27/01]

§16-25-40 Repealed. [R 1/27/01]

§16-25-41 Action on application; denial of application. (a) Unless otherwise provided by statute, and notwithstanding any other provision of this chapter, any complete application which is not approved or denied by the commissioner within a period of one year after the application is filed with the commissioner, shall be deemed approved by the commissioner as of the first day after the period of one year. For purposes of this section, an application is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all of the information in the form required by the commissioner, is received and accepted by the commissioner.

(b) If the commissioner is satisfied that the applicant meets the relevant criteria, the commissioner shall issue a written final decision and order approving the application.

(c) If the commissioner is not satisfied that the applicant meets the statutory criteria, the commissioner shall, unless otherwise provided by statute, issue a written decision denying the application, which shall include a statement of the reasons for the denial. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§91-13.5, 412:2-503, 412:2-504, 412:2-508, 412:3-102, 412:3-201, 412:3-202, 412:3-206, 412:3-207, 412:3-208, 412:3-210, 412:3-212, 412:3-213, 412:3-301, 412:3-304, 412:3-305, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:6-201,

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412:7-306, 412:7-408,

412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-107, 412:10-108, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-800, 412:10-803, 412:12-102, 412:12-103, 412:12-104, 412:12-107, 412:13-202, 412:13-203, 412:13-204, 412:13-213, 412:13-214, 412:13-216, 412:13-217, 412:13-218, 412:13-222, 412:13-227, 412:13-301)

§16-25-42 Decision denying application subject to administrative hearing; final decision and order. (a) Within fifteen days following receipt of a decision denying the application, the applicant may petition the commissioner for an administrative hearing which shall be held in accordance with chapter 91, HRS, and chapter 16-201.

(b) If a petition for an administrative hearing is not filed within the time specified, the commissioner's decision denying the application shall become a final decision and order denying the application.

(c) Upon the filing of a petition for an administrative hearing, and as expeditiously as possible, the commissioner shall assign the petition to a hearings officer for further proceedings pursuant to chapter 16-201. The commissioner shall issue a written final decision and order as expeditiously as possible, following the hearings officer's transmittal of the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statements in support of the recommended decision.

(d) Any written final decision and order of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first circuit, as provided in chapter 91, HRS. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§412:2-100, 412:2-107) (Imp: HRS §§412:2-503, 412:2-508, 412:3-102, 412:3-201, 412:3-207, 412:3-208, 412:3-210, 412:3-212, 412:3-213, 412:3-301, 412:3-305, 412:3-402, 412:3-503, 412:3-505, 412:3-603, 412:3-607, 412:3-608, 412:3-609, 412:3-611, 412:3-612, 412:3-613, 412:3-616, 412:3-617, 412:5-201, 412:5-203, 412:5-205, 412:5-205.5, 412:5-205.7, 412:5-302, 412:5-305, 412:5-401, 412:5-402, 412:5A-201, 412:5A-205, 412:6-201, 412:6-203, 412:6-204, 412:6-303, 412:6-306, 412:7-201, 412:7-203, 412:7-204, 412:7-306, 412:7-408, 412:8-202, 412:8-204, 412:8-301, 412:9-201, 412:9-400, 412:9-401, 412:9-403, 412:9-409, 412:10-103, 412:10-108, 412:10-109, 412:10-121, 412:10-201, 412:10-502, 412:10-800, 412:10-803, 412:12-102, 412:12-103, 412:12-104, 412:12-107, 412:13-202, 412:13-203, 412:13-204, 412:13-213, 412:13-214, 412:13-216, 412:13-218, 412:13-222, 412:13-227, 412:13-301)



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## SUBCHAPTER 5

§16-25-48 Repealed. [R 1/27/01]

§16-25-49 Repealed. [R 1/27/01]

§16-25-50 Repealed. [R 1/27/01]

§16-25-51 Repealed. [R 1/27/01]

§16-25-52 Repealed. [R 1/27/01]

§16-25-53 Repealed. [R 1/27/01]

§16-25-54 Repealed. [R 1/27/01]

§16-25-55 Repealed. [R 1/27/01]

§16-25-56 Repealed. [R 1/27/01]

## SUBCHAPTER 6

### REQUESTS FOR OPINIONS AND INTERPRETATIONS OF STATUTE OR RULE

§16-25-61 Inquiries from the public. Any opinion, interpretation, or advice rendered by the division shall be in keeping with the division's regulatory purpose. The division shall not render opinions or interpretations to private individuals, as to determine an individual's rights against an institution. [Eff 8/13/87; am and comp 1/27/01] (Auth:

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HRS §§91-2, 91-8, 412:2-100, 412:2-107) (Imp: HRS §§91-2, 91-8, 412:2-100, 412:2-107)

§16-25-62 Inquiries from financial institution or industry trade association. The division's response to an inquiry from a financial institution or industry trade association shall not determine private rights and obligations. The commissioner may decide to respond to a financial institution's or industry trade association's inquiry regarding an interpretation of a statute or rule that is consistent with the division's regulatory purpose.

A financial institution or industry trade association has a right to know whether the division will find a particular action to be within the bounds of the law. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§91-2, 91-8, 412:2-100, 412:2-107) (Imp: HRS §§91-2, 91-8, 412:2-100, 412:2-107)

§16-25-63 Requests for interpretation or opinion. (a) An inquirer who requests an interpretation of statute or rule shall state in writing:

- (1) The facts giving rise to the questions;
- (2) The specific questions being presented;
- (3) The inquirer's position on the questions; and
- (4) Any authority, legal or otherwise, for that position.

(b) If a request is made through counsel, counsel's client shall be identified by name. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§91-2, 91-8, 412:2-100, 412:2-107) (Imp: HRS §§91-2, 91-8, 412:2-100, 412:2-107)

§16-25-64 Interpretations and opinions by commissioner. (a) The commissioner shall issue in writing any statement that appears to interpret a statute or rule, render an opinion, or define a policy.

(b) The commissioner's interpretation or opinion shall have particular applicability to the inquirer, and shall not be intended to apply to other financial institutions or persons, unless so stated. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§91-2, 91-8, 412:2-100, 412:2-107) (Imp: HRS §§91-2, 91-8, 412:2-100, 412:2-107)

§16-25-65 Construction. Whenever this chapter is silent on a matter, the commissioner may refer to chapter 16-201 for guidance. [Eff 8/13/87; comp 1/27/01] (Auth: HRS §§91-2, 412:2-100, 412:2-107) (Imp: HRS §§91-2, 412:2-100, 412:2-107)

## SUBCHAPTER 7

### CONSUMER COMPLAINTS

§16-25-69 Consumer complaints. The division may only investigate and act upon complaints against Hawaii financial institutions. Consumer complaints against Hawaii financial institutions shall be filed in writing with the division. [Eff 8/13/87; am and comp 1/27/01] (Auth: HRS §§91-2, 91-8, 412:2-100, 412:2-107) (Imp: HRS §§91-2, 91-8, 412:2-100, 412:2-107)

Amendments to and compilation of chapter 16-25, Hawaii Administrative Rules, on the Summary Page dated December 11, 2000, were adopted on December 11, 2000, following a public hearing held on the same date, after public notice was given in the Hawaii State and County Public Notices for the City and County of Honolulu, County of Kauai, County of Maui and the County of Hawaii on November 6, 2000.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Lynn Y. Wakatsuki

LYNN Y. WAKATSUKI  
Commissioner of Financial Institutions

APPROVED AS TO FORM:      Date 1/04/01

/s/ James C. Paige

Deputy Attorney General

APPROVED:                      Date 1/04/01

/s/ Kathryn S. Matayoshi

KATHRYN S. MATAYOSHI, Director  
Commerce and Consumer Affairs

APPROVED:                      Date 1/11/01

/s/ Benjamin J. Cayetano

BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

January 17, 2001

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Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-25  
Hawaii Administrative Rules

December 11, 2000

SUMMARY

1. §§16-25-1 and 16-25-2 are amended.
2. §16-25-8 is amended.
3. §§16-25-10 through 16-25-17 are amended.
4. §§16-25-23 and 16-25-24 are amended.
5. §§16-25-27 and 16-25-28 are amended.
6. §§16-25-35 through 16-25-37 are amended.
7. §§16-25-39 and 16-25-40 are repealed.
8. §§16-25-41 and 16-25-42 are amended.
9. §§16-25-48 through 16-25-56 are repealed.
10. §§16-25-61 through 16-25-64 are amended.
11. §16-25-69 is amended.
12. Chapter 25 is compiled

THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS IN BRAILLE, LARGE PRINT OR AUDIO TAPE. PLEASE SUBMIT YOUR REQUEST TO THE COMMISSIONER OF FINANCIAL INSTITUTIONS AT (808) 586-2820.

Effective 1/27/01